

release, to enable him to close his accounts with the court, could it be contended, that such writing would not be evidence to disprove the receipt, because he is her husband, and the rule forbids the husband to testify for the wife? It seems to me very clear that it could not successfully be so contended.

But if the verbal declarations of the husband made under such circumstances are to be excluded, because they may operate in favor of his wife, his written declarations would be inadmissible for the same reason; the only difference between them being, that there is less danger of misapprehension when the declarations are reduced to writing, than when they rest in the memory of the witness. The evidence in the two cases, differs in degree, but not in kind.

By receiving these statements, there is, I think, no invasion of the rule, that husband and wife cannot be witnesses for or against each other. The husband procures a receipt from his wife, to enable him to settle his account in the Orphans Court, and when in the act of settling, he makes declarations going plainly to show that the receipt was procured for that purpose simply, and not upon actual payment. Now may not such declarations be received to explain the transaction as part of it? I think they may, and if so, they would I am persuaded, induce a jury to believe that the money was not paid. When these declarations were made, the rights of third parties were not involved, the husband alone was concerned, he stood in the relation of trustee to his wife and the parties entitled in remainder; and their only effect, regarding them as occupying the relation of trustee and *cetuisque trust*, was to show that he had procured evidence to prove a payment which he had not made. In other words they contradict and overthrow the receipt, which, according to the well established rule of evidence, may be done by parol.

My opinion, therefore, is, that the assignment of Mr. Williamson to Miller and Mayhew, of the 1st of February, 1849, cannot be allowed to stand against Mrs. Williamson, or the legatees in remainder. In the account settled by Williamson in the Orphans Court, on the 9th of October, 1848, in which he was